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September 7, 2004

Paula Foley, Esq., Hearing Officer  
Assistant General Counsel  
Department of Telecommunications & Energy  
Commonwealth of Massachusetts  
One South Station, 2<sup>nd</sup> Floor  
Boston, Massachusetts 02110

**Re: D.T.E. 03-60 – Implementation of Triennial Review Order**

Dear Ms. Foley:

The purpose of this letter is to inform the Department of Verizon Massachusetts' ("Verizon MA") concerns regarding the Department's August 23, 2004, notice requesting that "the parties to D.T.E. 03-60 attempt to reach a consensus on the factual information assembled as part of the Department's D.T.E. 03-60 proceeding to be forwarded to the FCC" in connection with the FCC's recent rulemaking<sup>1</sup> to establish new unbundling rules in response to the *USTA II* remand.<sup>2</sup> The Department's request is in response to the following statement made in the FCC's *Interim Rules Order*:

Given that our inquiry raises complex issues, and proceedings that state commissions initiated to implement the *Triennial Review Order* developed voluminous records containing information potentially relevant to our inquiry, we anticipate that parties might wish to submit much of that same factual evidence to support their positions here ... To

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<sup>1</sup> Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, released August 20, 2004 ("*Interim Rules Order*").

<sup>2</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), vacated in part and remanded, *United States Telecom Ass'n v. FCC*, Nos. 00-1012 *et al.*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

make the records from state proceedings more usable, we encourage state commissions and other parties to file summaries of the state proceedings, especially highlighting factual information that would be relevant under the guidance of *USTA II*. Similarly, we encourage state commissions and other parties to summarize state commission efforts to develop batch hot cut processes. To avoid duplicative filings, we encourage parties (particularly the state commissions and parties participating in the state proceedings) to coordinate with one another regarding the filing of that information.

*Interim Rules Order*, at ¶ 15.

For the following reasons, the Department should not engage in the exercise of attempting to summarize the information in this proceeding. Rather, to the extent that any party wishes to present information to the FCC that bears on that agency's obligations under *USTA II*, they should present the information directly to the FCC on the issues in question.

*First*, the issues in this proceeding were limited in scope. In addressing the unbundling of mass market switching, high capacity loops, and dedicated transport, Verizon MA relied solely on the FCC's triggers established in the *Triennial Review Order*. The triggers were based on objective criteria set by the FCC concerning where competitive local exchange carriers ("CLECs") and wholesale carriers have facilities and are serving customers. The data bearing on the triggers do not cover the range of information that, as indicated by the D.C. Circuit Court of Appeals in both *USTA I*<sup>3</sup> and *USTA II*, the FCC must consider when making the analysis required by Section 251(d)(2) of the Telecommunications Act of 1996 to mandate the unbundling of incumbent local exchange carriers' ("ILECs") networks. Given the narrow focus of the proceeding, it would be an unproductive use of the parties' and the Department's time to endeavor to summarize the information on which Verizon MA based its triggers case.

*Second*, the Department's investigation here was suspended following the issuance of the *USTA II* decision on March 2, 2004. Although some parties, including Verizon MA, submitted written, pre-filed initial and rebuttal testimony, no evidentiary hearings were held, no briefs were filed, and no data were admitted into evidence. In short, there is no evidentiary record for the Department to summarize. This is true not

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<sup>3</sup> *United States Telecomm. Ass'n v. FCC*, 290 F.3d 419, 424-25 (8<sup>th</sup> Cir. 2002) ("*USTA I*").

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only for the above unbundling issues, but also for Verizon MA's hot cut process<sup>4</sup> under investigation in D.T.E. 03-60.

Finally, in addition to the testimony being narrow in scope, the factual data is probably stale and outdated and, therefore, may not reflect the competitive environment. Verizon MA intends to offer in the FCC rulemaking current information bearing on the issues in D.T.E. 03-60.

Please contact me if you have further questions on this matter.

Very truly yours,

/s/Barbara Anne Sousa

Barbara Anne Sousa

cc: Mary L. Cottrell, Secretary  
Jesse Reyes, Esq., Hearing Officer  
Michael Isenberg, Esq., Telecommunications Director  
April Mulqueen, Esq., Asst. Telecommunications Director  
Attached DTE 03-60 Service List

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<sup>4</sup>

As to hot cuts, it should be noted that Verizon MA proposed in this case the same processes that Verizon New York ("Verizon NY") had proposed in a New York Public Service Commission ("NYPSC") proceeding that was being litigated at roughly the same time. *See* Case 02-C-1425, "Order Setting Permanent Hot Cut Rates" (issued and effective August 25, 2004). The NYPSC accepted the hot cut process described by Verizon NY based on the record evidence presented in that case. *Id.* at 18.